SUPREME COURT, U.S.

No. 411

No. 15123

United States
Court of Appeals
for the Ninth Circuit

W. A. ROBISON, Administrator of the Estate of ROBERT SIDEBOTHAM, Deceased, et al.,

Appellants,

vs.

HELENE MARCEAU SIDEBOTHAM,

Appellee.

Supplemental
Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division.

FILED

OCT 2 1956

PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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Appeal from the United States District Court for the Northern District of California, Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—9-21-56

NAMES AND ADDRESSES OF COUNSEL

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For the Appellee.

In the United States District Court for the Northern District of California, Southern Division

No. 32531

HELENE MARCEAU SIDEBOTHAM,

Plaintiff,

vs.

W. A. ROBISON, Administrator of the Estate of Robert Sidebotham, Deceased, et al.,

Defendants.

Before: Hon. Michael J. Roche, Judge.

PROCEEDINGS ON SETTLEMENT OF FINDINGS

Appearances:

For the Plaintiff:
MANUEL RUIZ, JR., ESQ.

For the Defendant:
DELGER TROWBRIDGE and
FRANK J. FONTES, ESQ.

* * *

Monday, February 27, 1956—3:00 P.M.

Mr. Trowbridge: May it please the Court, at this time I would like to file a petition of the Public Administrator and his attorneys for allowance of expenses of defense, including attorneys' fees, and I have delivered a copy to Mr. Ruiz, and I

would like the record to show that I have so delivered a copy to Mr. Ruiz, that he waives notice of time of hearing and consents the matter be heard now.

Mr. Ruiz: That is correct.

Mr. Trowbridge: We have this petition verified, five pages long, and would your Honor like me to summarize it or read it?

The Court: Summarize it.

Mr. Trowbridge: All right, your Honor.

This petition shows that this case was started on October 10, 1952, by the filing of a complaint in San Francisco in the Superior Court, City and County of San Francisco, removed to this court early the following year, February of 1953, because of the fact that the heirs at law were non-residents. The services performed have to do with the settling of the pleadings. First there are three amended complaints. There was an amendment to the complaint, so we had, in effect, four different complaints to analyze, and we filed motions to dismiss as to two of the complaints, and [39*] the motions to dismiss were granted in one case by Judge Murphy.

Then there was a further amended complaint filed, and then Judge Carter granted the second motion to dismiss.

Then there was an appeal taken by the plaintiff to the United States Court of Appeals, as your Honor knows, and we wrote a brief and argued the case.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Then there was a petition for rehearing after the decision against us. Then we had to file a six-page answer to the, I think it was the third amended complaint, and then another amended complaint filed, and we had to file another six-page answer.

Then we took the deposition of the plaintiff in Los Angeles last February 18, and we also propounded interrogatories and had other matters to do. There was a great deal of library work in this case because, as your Honor will remember, we raised the defense of the proceeding in the Superior Court in San Francisco, petition to determine heirship. Then we briefed the matter of the Nevada claim, the effect of the Nevada complaint, the admission in it. We briefed the effect of the Wyoming decree, we briefed the question of tracing assets, we briefed the question of laches and state of limitations, all of which took days and days of work in the library.

Then we had a trial of four days last fall, October 24, [40] '5, '6 and '7, with an oral argument at the end of the trial, and there was a 22-page brief that was prepared by us.

Then we had to consider your Honor's opinion and we proposed amendments to the proposed findings of fact and conclusions of law. And we have also included certain expenses of the administrator, out-of-pocket expenses, which are as follows: four items—expenses of printing brief on appeal, $115.14; expense of printing petition for rehearing, $76.52; the deposition in Los Angeles cost $98.64; and my own traveling expense was $49.15.

Then portions of the transcript on the trial before your Honor were written up, and they cost $92.40.

The petition ends up with a statement that the defense was made in good faith and on reasonable grounds, and we ask for attorneys' fees and expenses that we have listed.

Now, I want to say that I did receive some compensation in the probate court for preliminary work in this case. It was in December of 1954 that I filed a petition in the probate court which covered not only the preliminary work in this case, the early stages of it, but it also covered settling a claim of another woman who claimed a half interest in the estate as a partner.

We had a tax case in the City and County of San Francisco, which we got rid of, and there were many other things, so that the compensation that I got in December of 1954 only [41] covered a small part of the services rendered in this case.

The Court: You are asking for how much?

Mr. Trowbridge: No specific amount mentioned in the petition, but I think that inasmuch as this is a $100,000 estate, a half of the estate is involved here, that under the circumstances I would suggest $7,500 and make an allowance of $1,500 for the work that we were paid for in the probate court, a net of $6,000.

Mr. Ruiz: When counsel handed me this at 3 o'clock, your Honor, I called counsel's attention to the fact that an application for attorneys' fees had been made in the probate court covering not only the perliminary work, but the appeal as well. In

other words, we have here about a five-page recital concerning what Mr. Robison did and what Mr. Trowbridge did, including the trip to Los Angeles, which was mentioned on the application before the probate court; almost four pages of the five pages with respect to work done has already been passed upon by the probate court. I don't have the probate file before me, but——

Mr. Trowbridge: If the facts are not correct, as you state, then I will correct them later. I have the proof right here.

Mr. Ruiz: I wish to be corrected on it because I am drawing upon independent memory. If I recall correctly, the appeal was mentioned. [42]

That is from the equitable side of it, and as I think I mentioned before, as a matter of fact, for the purposes of the record, I would like to know at this time how much fees have been granted to counsel and his associate counsel in this action, as well as Mr. Trowbridge in this matter in the probate court. Would counsel care to answer that question?

Mr. Trowbridge: Certainly.

The Court: Total amount.

Mr. Ruiz: Total amounts.

Mr. Trowbridge: Yes. Before I do that I want to call attention to a statement Mr. Ruiz made that this deposition in Los Angeles was included in the probate allowance. It was not, because the petition was in February, February 18 of 1955. That was the date of the deposition, February 18, 1955, and

the order was made by the probate court in December of 1954.

Mr. Ruiz: I believe, did not the application for attorneys' fees mention the fact that a deposition was to be taken?

Mr. Trowbridge: I am not sure.

Mr. Ruiz: I think it did.

Mr. Trowbridge: But anyway the services were performed after December 1954, with regard to the taking of the deposition. We certainly planned to take it for a long time. [43]

The allowance that was made to me in the probate court in December of 1954 was $4,400, and as I say, that covered the settlement in the Ramsey case, it covered successfully contesting a personal property tax of the City and County of San Francisco for $5,000, it covered a lot of the preliminary work in this case of Arthur, W. A. Arthur against the public administrator which involved the entire estate. There they are asking to have the whole estate set aside for constructive fraud. It also covered a lot of work in connection with the income taxes of the federal government in the sum of $149,000, and for all of that work, including this work that is mentioned here, the preliminary work in this case, including some of the appeal work, as I say, my personal allowance was $4,400 in the probate court.

Mr. Ruiz: What has been the allowance of Mr. Monell?

Mr. Trowbridge: Mr. Monell received $3,600, but he is not petitioning here, because he represents

the heirs, didn't represent the public administrator, and he is not petitioning for any fee.

Mr. Ruiz: How much was allowed Mr. Jepsen, the other attorney?

Mr. Trowbridge: $2,000, and he had nothing to do with this case at all.

Mr. Ruiz: And how much has been allowed the administrator? [44]

Mr. Trowbridge: I am not sure. The administrator, and Mr. Fontes as such, I think were—I don't think anything has been allowed to them as such. There was an early allowance on account of extraordinary fees of fifteen—not extraordinary, on account of ordinary compensation, there was an early allowance of about $1,500 to the attorneys, including Mr. Fontes' predecessor. That was ordinary probate services, and I don't think anything has been allowed to either of the administrators as such.

Mr. Ruiz: There was one more question, if I may be permitted, if the Court please.

Is there any reason why this petition cannot be filed before the probate court as a matter of law?

Mr. Trowbridge: Well, as I explained to your Honor this morning, it seems to me only fair that if this lady is going to take half of the assets of the estate, that her half of the assets should bear the expenses, all the expenses of the litigation in this court, and I don't think it's fair for any of the legal expenses of this litigation, which concerns her half of the estate, to be saddled on the other half of the estate, which has nothing to do with this litigation.

Mr. Ruiz: Now, with the way the matter has been presented to the Court in respect to the judgment, the administrator has been asked to pay in due course of [45] administration. I think that protects any qualms that counsel may have, No. 1; No. 2, I think the record is clear that compensation has been granted for services rendered and that there shouldn't be any duplicity. No. 3, in any event this court does not have jurisdiction with respect to the pleadings, with respect to anything that has been presented in the trial of the case to grant attorneys' fees. No. 4, the California law is clear that attorneys' fees can only be granted when there is some advantage that the administrator has procured on behalf of the estate, and in this particular case there is no advantage. Had the administrator succeeded in this case, the reverse would have been true. For that reason, the plaintiff, or respondent in this motion, opposes the same.

Mr. Trowbridge: I would like to answer the last point first, that is, the Court hasn't any power to grant any compensation because of the fact that the public administrator wasn't successful in this proceeding. We had exactly the same situation in the case of Egert versus Pacific States Saving and Loan. In that case the defense was presented by the beneficiary instead of by the Building and Loan Commissioner because he was on both sides of the fence, and the position that was presented on behalf of the Building and Loan Commissioner was unsuccessful in the defense of this action by the depositors of Fidelity Savings and Loan. [46]

Also, the court in that case passed on that very question, and in deciding that the Building and Loan Commissioner—well, it wasn't the Building and Loan Commissioner, but anyway, the attorneys who did represent the defense in that case, which the Building and Loan Commissioner would normally have presented, they held that in that case, since there had to be a defense, the Building and Loan Commissioner had the duty of presenting the defense if he were not disqualified; that that being his duty, that therefore he should have a right to have his counsel compensated.

They cited the case of Dingwell versus Seymour, an old California case, to the same effect where there was an unsuccessful defense made. The court said—I think it was the court, or else it was in the brief, that if the custodian or a trustee was brought into court involuntarily and cannot be sure of being reimbursed for the expenses of his counsel, he wouldn't come in at all, because he couldn't afford to make a defense if he wasn't sure he was going to be compensated.

So in this case here, this is a case in equity that is found before the court, and it isn't a question whether the counsel for the public administrator have benefitted the fund, the public administrator has carried out his duty of trying to protect the fund, which is in his hands. It is his [47] duty to resist all assault in a court in a reasonable way on good grounds. That being his duty, he is entitled to a compensation for his attorneys, whom he selected to perform his duty for him in that regard.

Mr. Ruiz: In answer to that, the law of receivership, your Honor, in the State of California with respect to conservation of assets is to be distinguished from the law with respect to probate procedure. If the Court will read that case, the Court will see immediately there is a clear differentiation.

Mr. Trowbridge: Well, that is not so, I am sorry to say that bluntly, but there is a case by Judge Kaufman within the last year involving administrators, and the point is just the same, the public administrator is nothing but a custodian and receiver.

The Court: You have the advance sheet on that?

Mr. Trowbridge: The case that I have reference to was about a year ago. I can furnish the citation of the case by Judge Kaufman involving a probate proceeding, involving the administrator, yes. It would take a minute or two to find it. I don't have it with me, I don't know whether I have it handy or not, but it is named something like the Estate of Arota, something like that, but I know I read it recently.

The Court: I am prepared to sign your findings and judgment. That will then go back to the probate court, will [48] it not?

M. Ruiz: Yes, your Honor.

The Court: The probate court has a full opportunity to fix the fee?

Mr. Ruiz: Yes, your Honor.

The Court: In this case as well as the other cases?

Mr. Ruiz: Yes, that is correct.

The Court: I think that's the regular procedure, isn't that true?

Mr. Trowbridge: Well, I don't think in this particular case, your Honor, because as I say, it is going to penalize the other half of the estate for the services rendered here, and your Honor has this fund before him in this court, and the public administrator has been brought into this litigation by service of summons without desire to come in, but he has come in, of course, as is his duty, having been served. But I think that being so, this fund of this court should bear the expenses of the litigation pertaining to this fund.

The Court: Maybe the probate court will so determine.

Mr. Trowbridge: I don't think the probate court would have any jurisdiction, your Honor, to take any money out of Mrs. Sidebotham's half here.

The Court: Why not?

Mr. Trowbridge: Unless your judgment makes it clear to that effect. If your judgment has a paragraph in it that the [49] public administrator and the probate court may make an order affecting this half——

The Court: Any order that I may make will not interfere with your presenting, through the public administrator, the work and labor performed here, if I follow the law and understand it. So that I may be on safe grounds on that score, I would like to get you on the record if that isn't the law.

Mr. Ruiz: Yes, that is the law, your Honor.

The Court: In the event this is approved, this half of the property can be assessed for the proper costs.

Mr. Ruiz: That depends upon the arguments that are submitted by my worthy opponent, because of this fact: This judgment is going to be subject to interpretation. This judgment sets forth and is memorializing an obligation between the decedent and his former wife. The fact that it is a judgment only means it is again susceptible to further interpretation. This judgment will be susceptible to interpretation not only with respect to the matter at hand, but with respect to the matter to which reference has been made, with respect to the trust, the estate constituting trust property of some other people, whether the judgment in this case does or does not cut that off. This judgment will be susceptible to interpretation with respect to the United States Internal Revenue. We cannot project ourselves into [50] the future.

As I said before, this is ordinary. Oftentimes judgments are procured and then other judgments are procured, and it depends upon the ability and astuteness of counsel with respect to the interpretation and the law.

It is my interpretation, sir, of the law that the probate court at the present time has within its jurisdiction all of the corpus of the estate, and in due time will interpret the law and that it may interpret to the effect that Mrs. Sidebotham, out of her proportion, may be susceptible to a payment of attorneys' fees.

The Court: That would be my view.

Mr. Ruiz: And fees for the administrator.

The Court: So that you are not prejudiced by this motion, I am prepared to deny your motion without prejudice so that you may renew and have your day in court.

Mr. Trowbridge: The thing that we are con- about, your Honor, is that we may be faced hereafter with an argument, not necessarily by Mr. Ruiz, but by somebody else, maybe the federal government or some other claimant, that since your Honor has held that the property here in the estate was held as tenants in common by Mr. and Mrs. Sidebotham as far back as 1946, that the probate court has no right to deduct anything from her half interest for expenses of this litigation, including attorneys' fees, under the analogy of an express [51] trust. We will say that the public administrator is holding the property, half of the estate under an express trust for the benefit of Mrs. Sidebotham and that that express trust goes way back to 1946.

Now, if that argument is made by Mr. Ruiz or anybody else, it might be held by the probate court, or some other court, that the probate court has no jurisdiction to take anything out of her half interest. That's what we are afraid of. But if your Honor indicates, as you are now indicating, that it's your opinion and your intention that eventually whatever goes to Mrs. Sidebotham is to bear a fair proportion of the expenses of defending this case by the public administrator, including attor-

neys' fees, that certainly will be very helpful, if your Honor indicates that is your opinion and intention.

The Court: I think to stay within the law, and I could be mistaken in this, when this judgment is presented to the probate court I think they are legally in a position to recognize that you came into this court and that you haven't been compensated for the work and labor here. I think they are the ones to make the determination in fixing your fees.

Mr. Trowbridge: Well, that may be true as to fixing the fee, but equally important is the question which half of the estate will bear the fee, whether it should be Mrs. Sidebotham's half of the estate or—— [52]

The Court: It is for them to determine, the probate court to determine.

Mr. Trowbridge: We may end up by having further litigation in the form of a declaratory relief action or petition for instructions, or something of that sort, to find out who is going to bear the burden of the expense of the litigation.

The Court: Well, your motion will have to be denied without prejudice, and I am prepared to sign the findings and the judgment.

Mr. Trowbridge: May it please the Court, will there by a formal minute order denying attorneys' fees without prejudice?

The Court: Yes, sir.

Mr. Trowbridge: Thank you.

The Court: I did the best I could under difficul-

ties, gentlemen. Go forward, and I hope and trust right will finally prevail. I'm glad both of you are in good humor.

[Endorsed]: Filed August 9, 1956. [53]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the supplement to the record on appeal, as requested by counsel for the appellant:

Reporter's transcript of proceedings of February 27, 1956.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 10th day of August, 1956.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15123. In the United States Court of Appeals for the Ninth Circuit. W. A. Robison, Administrator of the Estate of Robert Sidebotham, Deceased, et al., Appellants, vs. Helene Marceau Sidebotham, Appellee. Supplemental Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 10, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.